FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

Second Appeal No. 440/2004
(Diwakar Vitthal Bandawar Vs. Moreshwar Ramchandra Kotpalliwar & 3 others)

Appeal	District :
Application No.	of 200
Writ petition	

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

Mr. P.S. Khubalkar, Adv. for the appellant.

CORAM : Smt. Vasanti A. Naik, J.
DATED : 23rd July, 2007.

Heard Shri Khubalkar for the appellant.

The appellant is the original plaintiff. A suit was filed by the plaintiff against the defendant nos. 1 to 4 for possession of the suit property. According to the plaintiff, he had purchased the suit property from defendant no.4 by a registered sale deed dated 27/1/1989. Since defendant nos. 1 to 4 obstructed the plaintiff from entering the premises, a suit was filed. The plaintiff, therefore, sought for possession of the suit property or in the alternative, for refund of Rs. 4,000/- which the plaintiff had paid to the defendant no.4 towards the purchase price.

The defendants filed their written statement and denied the claim of the plaintiff. According to the defendants, defendant no.4 was not the exclusive owner of the suit property and was a drunkard. It was pleaded in the written statement

that the plaintiff took undue advantage of the aforesaid situation and got the sale deed executed from defendant no.4 when he was intoxicated. The defendants pleaded that the sale deed was not binding on the defendant nos. 1 to 3 as the defendant no.4 had no right to sell the property. It was further pleaded by the defendants that defendant no.4 had not received any consideration towards the sale of the suit property and hence the sale deed dated 27/1/1989 was a bogus and sham document in the absence of payment of consideration.

On the aforesaid pleadings of the parties, the issues were framed and the trial Court decreed the suit of the plaintiff. The trial Court held that the plaintiff had proved that he was the owner of the suit property and the defendants had failed to prove that the sale deed dated 27/1/1989 was a bogus document. The legal heirs of defendant no.4 who died during the pendency of the suit, had filed a counter claim for a declaration that the sale deed dated 27/1/1989 be declared as void and inoperative. The trial Court dismissed the counter claim of the defendants.

The judgment passed by the trial Court was challenged by the defendants in appeal. The Additional District Judge, Chandrapur, reversed the findings recorded by the trial Court and held that

the plaintiff had failed to prove his ownership over the suit property. The appellate Court further held that though the defendants had specifically pleaded that the consideration of Rs. 4,000/- did not pass from the plaintiff to the defendant no.4, the plaintiff did not produce any evidence on record to show that an amount of Rs. 4,000/- was paid by the plaintiff to the defendant no.4 at any point of time. The Court further held that the property was joint family property of the defendants and the defendant no.4 alone did not have an authority to sell the property to the plaintiff. Since the plaintiff had not stated in his evidence that he had actually paid Rs. 4,000/- to the defendant no.4, the appellate Court held that the sale deed was without consideration and consequently, could be declared as sham and bogus document.

I have perused the judgment passed by the appellate Court as also the oral evidence tendered by the plaintiff. The appellate Court is absolutely justified in holding that the consideration did not pass from the plaintiff to the defendant no.4 towards the execution of the sale deed as the plaintiff had not stated in his evidence that he actually paid an amount of Rs. 4,000/- to the defendant no.4 specially when a specific plea of absence of consideration was raised by the defendants. The appellate Court was, therefore, justified in decreeing

the counter claim filed by the defendant no.4A and 4B, and dismissing the suit filed by the plaintiff, by reversing the judgment and decree passed by the trial Court.

All the findings recorded by the appellate Court are based on a proper appreciation of the material evidence on record. The judgment of this Court in the case of **Kisan Vs. Kausalyabai** reported in **2007 (3) Bombay C.R. 118** and relied on by the counsel for the appellant, would not be applicable to the facts of the case.

Since no substantial question of law arises for consideration in this second appeal, same is dismissed with no order as to costs.

JUDGE

RMP